

REMARKS

The application has been reviewed in light of the Office Action mailed May 18, 2005. At the time of the Office Action, Claims 1, 3, 4, 7-10, 13, and 14 were pending in this application. Applicant previously canceled Claims 2, 5 and 6 without prejudice or disclaimer, and Claims 11, 12 and 15-36 were canceled due to an election/restriction. Claims 1, 3, 4, 7-10, 13, and 14 were rejected. Applicant respectfully traverses and submits the cited prior art does not render the subject matter of amended Claim 1 obvious. Claim 1 has been amended to emphasize that the presently claimed embodiment of the invention is directed to a "high throughput screening array," not just to an array. In furtherance of this emphasis, Applicant has amended Claim 1 to specify that the porous material has a mean pore diameter greater than about 10 microns, and consists of a density of 6 pounds per cubic foot or higher. These limitations relate to the high throughput characteristic of the claimed array. Neither Glazer et al. nor Yasukawa et al. disclose and/or suggest such a porous material for a high throughput array. For example: (1) Glazer et al. teaches, "Pore dimensions were measured directly from the images as 0.1 to 0.3 microns;" and (2) Yasukawa et al. teach nothing in relation to "pore dimensions." The Examiner notes that Yasukawa teaches silica fibers having "diameters between about 5 to 20 μm ." This statement does not teach a porous material having a "mean pore diameter of at least about 10 microns."

And as noted, the presently claimed embodiment of the invention is directed to a high throughput screening array material having a density of "6 pounds per cubic foot or higher." It is respectfully submitted that a full reading of Yasukawa et al. leads to the conclusion that the material always must include a portion having a density ranging from about "3.5 and 5.5 pounds/ft³." Indeed, Yasukawa et al. state in the "Summary of the Invention":

The matrix is characterized by . . . (b) a density of between about 3.5 and 5.5 pounds/ft³ . . .

(Col. 1, lines 29-30).

The slurry is allowed to settle under conditions effective to produce a fiber block having a selected fiber density between about 3.3 and 5.3 pounds/ft³.

(Col. 2, lines 9-11)

The target density of the matrix after drying is between 3.3 to 5.3 pounds/ft³.

(Col. 8, lines 7-9)

The matrix is then heated to progressively higher temperature . . . until a desired fusion and density are achieved, the target density being between 3.5 and 5.5 pounds/ft³.

(Col. 8, line 65 - Col. 9, line 3)

The target density of the matrix after drying is between 3.3 to 5.3 pcf.

(Col. 14, lines 50-51)

The dried matrix was sintered about 2200°F . . . to achieve fired densities between 3.3 to 5.5 pcf.

(Col. 14, lines 53-56)

And Yasukawa's Claim 1 claims:

"(b) a density of between about 3.5 and about 5.5 pounds/ft³ . . ."

Yasukawa's Claim 6, dependent on Claim 1, claims:

. . . prepared by heating a fiber block . . . having a density between about 3.3 and 5.3 pounds/cubic feet . . .

And finally, as referred to by the Examiner, Claim 8 states:

8. The matrix of claim 1 having in one matrix dimension, a matrix **gradient progressing between a selected density 3.5-5.0 pounds/ft³** to a selected density 5.5 to 12 pounds/ft³.

Thus, Yasukawa, et al. teach that their material must include a matrix having a density of 3.5 to 5.5 pounds/ft³, and preferably the entire matrix has a density ranging from 3.5 to 5.5 pounds/ft³. Even Claim 8, previously referenced by the Examiner, requires that the matrix contain a specific portion having a density at or below 5.5 pounds/ft³. Indeed, Claim 8, while not supported by the Yasukawa et al.'s specification, is dependent on Claim 1 which requires "(b) a density of between 3.5 and 5.5 pounds/ft³." Whereas, the presently claimed embodiment of the invention is directed to a porous material having a density of "6.0 pounds per cubic foot and higher." Consequently, Applicant respectfully submits that amended

Claim 1 is patentable over the art of record. Claims 3, 4, 7-10, 13 and 14 depend from amended Claim 1 and thus, it is respectfully submitted they are also patentable over the art of record. The examiner has failed to establish a *prima facie* case of obviousness. Consequently, Applicant requests withdrawal of the rejection and allowance of Claims 1, 3, 4, 7-10, 13 and 14.

Claim Rejections Under 35 U.S.C. §103

Claims 1, 3, 4, 7-10, 13, and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Glazer et al.'s "*High Surface Area Substrates for DNA Arrays*" in Materials Research Society Symposium Proceedings ("Glazer et al.") and U.S. Patent 5,629,186 issued to Robert D. Yasukawa et al. ("Yasukawa et al.").

The Examiner states in support of his obviousness rejection combining Glazer and Yasukawa et al. that that Yasukawa et al. discloses a density of "about 5.5 pounds/ft³" and would read on about a density "6-6.5 pounds/ft³." The Examiner's belief is misplaced and the Applicant has amended Claim 1 to help further distinguish Yasukawa. The presently claimed material "**consists** of a density of about 6 pounds per cubic foot and higher." Thus, material having densities below 6 pounds per cubic foot are excluded by this language. As stated repeatedly, Yasukawa et al. require that their material ALWAYS include a portion having a density of 3.5 to about 5.5 pounds per cubic foot. The range cited by the Examiner for Yasukawa (up to 12 pounds per cubic foot) relates to a material with a **gradient density**, that is, it must have portions with a density as low as 3.5 to 5.5 pounds per cubic foot. The presently claimed material does not cover a material with a portion having a density as low as 3.5 to 5.5 pounds per cubic foot and the Applicant does not think such a low density material would function to provide the present invention and thus, the reason for the greater than 6 pounds per cubic foot limitation. The Examiner has failed to establish a *prima facie* case of obviousness.

Claims 1, 3, 4, 7-10, 13, and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,959,098 issued to Martin Goldberg et al. ("Goldberg et al.") and Yasukawa et al. Yasukawa et al. for the reasons stated above, does not teach the presently claimed subject matter, e.g., a material consisting of a density of "6 pounds per cubic foot and higher." Thus, the Examiner has failed to establish a *prima facie* case of obviousness.

Rejections under 35 U.S.C. § 112

Claims 1, 3, 4, 7-10, 13 and 14 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant amends Claims 1, 7-9 to overcome these rejections and respectfully requests full allowance of Claims 1, 7-9 as amended.

The Examiner stated with regards to claim 1 that he could not find support for the claim language regarding “a density greater than six pounds per cubic foot” (which now reads: “6.0 pounds per cubic foot and higher.”) This is baffling in light of the disclosure at page 4 of the specification wherein it is expressly taught that the claimed material may have **“a density of about 6 pounds per cubic foot (96.1 kg/m³) and higher.”** Obviously, the claim language is supported and the rejection is improper.

The Examiner also stated that he could not find support for the language “‘bound to surfaces of a fused fiber porous material’, which would not read on more than the ‘two-dimensional’ surface that was previously claimed. The ‘porous’ material surface in the previously presented claim did not refer to ‘micro’ surfaces of the ‘porous’ material...but rather to the ‘planar’ surface of the two-dimensional array as a whole.” A “porous” material by definition does not have a single surface, it is “porous” and thus, has multiple surfaces. For example, a sponge does not have a single surface but has multiple surfaces throughout. The presently claimed material is described in the specification as a fused fiber matrix (pg. 10, e.g.,) and the description describes and supports a “matrix block” having “voids in the matrix such as a lattice of channels throughout the block.” As one can imagine, those channels have surfaces and are open to the top surface of the block and run throughout, i.e., it is porous. To have a “channel”, one has to have surfaces, e.g., walls, to define a channel or void in a material. Thus, the Examiner’s rejection is misplaced and should be withdrawn.

In addition, the Examiner seems to be under the incorrect assumption that the present Applicant is somehow limited to subject matter “previously claimed.” The Applicant filed an RCE and submitted new claims that are fully supported by the specification. Applicant’s counsel is unaware of any case law, and there is none, to support the Examiner’s position that an Applicant is limited to previously claimed subject matter. The new claimed subject matter

is clearly not new matter and is completely supported by the specification. The rejection is misplaced and should be withdrawal .

Claims 1, 3, 4, 7-10, 13, and 14 were rejected by the Examiner under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant amends Claims 1, 7, 8 and 9 to overcome these rejections and respectfully request full allowance of Claims 1, 3, 4, 7-10, 13, and 14.

CONCLUSION

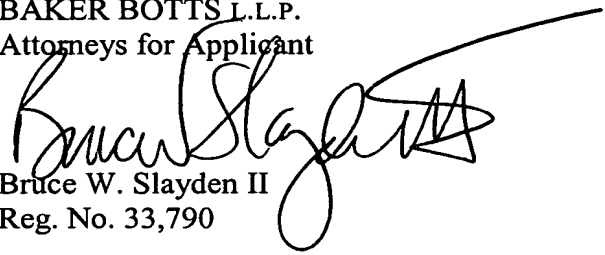
In light of the above amendments and remarks Applicant respectfully submits that the application is now in condition for allowance and early notice of the same is earnestly solicited. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone or facsimile.

Applicant encloses a Petition for Extension of Time and authorizes the Commissioner to charge the \$510.00 fee for a three-month extension of time to Deposit Account No. 50-2148 of Baker Botts L.L.P..

Applicant believes no additional fees are due at this time, however, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant


Bruce W. Slayden II
Reg. No. 33,790

Date: 11/18/2005

Correspondence Address:

Customer Number **31625**

512.322.2606 (phone)

512.322.8306 (fax)